

U.S. DEPARTMENT OF COMMERCE
Office of Inspector General



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***NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION***

*NMFS's Interagency and Other
Special Agreements Require
Additional Improvements*

Inspection Report No. IPE-10775 / September 1998

Office of Inspections and Program Evaluations






UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

September 30, 1998

MEMORANDUM FOR: Dr. D. James Baker
Under Secretary for Oceans and Atmosphere

FROM: Johnnie E. Frazier 
Acting Inspector General

SUBJECT: Final Report: *NMFS's Interagency and Other Special Agreements Require Additional Improvements (IPE-10775)*

This is our final letter report examining the National Oceanic and Atmospheric Administration's National Marine Fisheries Service's (NMFS) management of interagency and other special agreements. This report is part of a series of reports to be issued on our Department-wide review of the various types of interagency and other special agreements that the bureaus enter into with federal and non-federal parties. These agreements involve performing work for others (reimbursable agreements), acquiring work from others (obligation agreements), or coordinating complementary programs without the transfer of funds (memoranda of understanding or agreement).

We performed a limited examination of NMFS's interagency and other special agreements. We recognize that NMFS is in the process of implementing new policies and procedures for agreements. We support this move to strengthen NMFS's agreement process and have recommended some changes in the new policies and procedures. Once implemented, NMFS needs to regularly monitor the efficiency and effectiveness of these guidelines, to ensure that it is able to maintain strong management controls over its agreement process. Also, NMFS should work with the Department's Office of General Counsel (OGC) to revise the guidelines to more clearly reflect which agreements need legal review and clarify that it is the sole responsibility of OGC to provide clearance for such agreements. Finally, NMFS needs to develop a centralized database for all NMFS agreements. NMFS's database should be compatible with any forthcoming departmental guidance.

NOAA's response to our draft report concurred with our findings and recommendations and, in some cases, indicates that NMFS has taken preliminary action to address our concerns. OGC's response to the draft report generally agreed with our findings and recommendations, but suggested changes, which we have made, to clarify the issue of legal review of NMFS agreements. Copies of both responses are included in their entirety as attachments to this report.

Please provide us with an action plan addressing the inspection recommendations, including when your intended actions will be completed, within 60 days, in accordance with the procedures described in DAO 213-5. We appreciate the cooperation and courtesies extended by your staff during our inspection.

PURPOSE AND SCOPE

Fieldwork was performed during the period September 9 through October 17, 1997, with some follow-up work through May 1998. This review was conducted as a follow-up to our May 1995 audit report, *NMFS's Cost Recovery for Sponsored Research Needs Improvement* (STL-6528), and as part of the Department-wide review mentioned above. This review was conducted pursuant to the authority of the Inspector General Act of 1978, as amended, and in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

When we began our review of NMFS's agreements, the purpose of our inspection was to assess the effectiveness and efficiency of NMFS's processes for entering into agreements with departmental offices and outside parties. However, during our review, we learned that NMFS was preparing new policies and procedures for agreements, in response to our May 1995 audit report. NMFS's draft guidance on agreements was reviewed against the audit report recommendations and cleared by the OIG on September 18, 1997. The guidance was also cleared by OGC on December 29, 1997. Following a series of discussions with NMFS officials, OGC also provided thresholds for legal review of NMFS agreements. On January 28, 1998, NOAA's Assistant Administrator for Fisheries issued the final policy and procedures for agreements.

Because this new guidance is not fully implemented, we decided to limit our review. The scope of our inspection included reviewing a representative sample of 49 of the 243 NMFS agreements to determine (1) the appropriateness and advisability of the agreements as funding mechanisms for specific projects, (2) the extent to which NMFS offices are supported through and rely on these agreements, (3) the relevance of these agreements to departmental goals and objectives, and (4) the degree to which any of these agreements may have circumvented procurement or financial assistance regulations. We reviewed 10 of the agreements for compliance with all agreement requirements, including recovery of total costs, review by counsel, and implementation of previous OIG recommendations. For the remaining 39 agreements, our review was limited to whether the agreements had the required agreement terms, such as duration and citation of a legal authority. We did not evaluate NMFS financial, managerial, and programmatic oversight of agreements because these issues are addressed in the new guidance and the changes are still being implemented.

BACKGROUND

NMFS consists of five discrete program offices at the headquarters level and five offices at the regional level that support regional science centers, that, in turn, support local laboratories. NMFS's mission includes (1) building sustainable fisheries, (2) recovering protected species, and (3) sustaining healthy coasts. To accomplish its mission, NMFS undertakes special projects, reimbursable activities, and programmatic efforts with other governmental and non-governmental entities. Various types of agreements establish the terms of the relationships. For example, NMFS defines interagency agreements as written documents containing specific provisions of

governing authorities, responsibilities, and funding entered into between itself and another organization. In addition, NMFS specifies that memoranda of agreement/understanding are appropriate when (1) the transaction does not involve a transfer of funding, (2) undertakings are assumed by both parties, (3) official documentation of these undertakings is required or may be of interest to third parties, and (4) the undertakings are expected to continue over an extended period of time.

OBSERVATIONS AND CONCLUSIONS

I. Recent Guidelines for Preparing and Reviewing Agreements Need Further Improvements and Proper Implementation

NMFS's new guidance prescribes policies and procedures for the review and clearance of interagency agreements and memoranda of agreement or understanding. The new guidance applies to all NMFS organizational units involved in reimbursable work, transfers of funds to other agencies, and unfunded relationships. The guidance is intended to supplement the existing NOAA and departmental authorities. It outlines the responsibilities of NMFS managers, describes the procedures for review and clearance, and provides three sample transmittal memoranda and one sample joint project agreement. In addition, the new NMFS guidance provides a checklist for preparing agreements and definitions of agreement terms.

NMFS first issued its new policies and procedures for agreements in draft form in June 1997 to all regional administrators; science center, office, and laboratory directors; headquarters budget staff; and budget and administrative staff in the field offices. Since that time, many NMFS offices have begun implementing this new guidance. To assist in the implementation, NMFS has completed three training sessions for regional staff, and plans to offer one more regional training session in August 1998. NMFS also presented the new guidance to senior-level headquarters and regional officials at a NMFS Leadership Council meeting in December 1997. NMFS's final policy and procedures for agreements were officially issued on January 28, 1998.

NMFS and OGC have reported notable improvements to the agreements that have been prepared since the draft policies and procedures were issued in June 1997. For example, many more NMFS agreements now cite the correct legal authorities and include the proper legal statements and budget breakdowns showing that the correct overhead rates are being charged. During our limited review of NMFS agreements, we also observed these improvements.

However, as outlined below, we found issues relating to NMFS's implementation of its new guidance that should be addressed. In addition, NMFS should also be aware of some problems we found with existing NMFS agreements. The new NMFS guidance, if properly implemented, should correct several of these preexisting problems. In other cases, additional guidance is required. If NMFS's new guidance does not offer actions to correct these deficiencies, future agreements may result in less than full cost recovery and increased potential for invalid agreements. Finally, NMFS needs to regularly monitor the effectiveness and efficiency of

NMFS's guidance on agreements, including a comprehensive review one year from full implementation of the new guidance, to ensure that adequate management controls are in place¹.

Legal review requirements need to be clarified and periodically evaluated

NMFS and OGC recently determined thresholds and criteria for OGC's legal review of NMFS agreements. The new NMFS guidelines state that OGC will review all NMFS agreements except (1) Economy Act agreements where less than \$100,000 is being transferred or (2) unfunded agreements with other federal agencies that are for the period of five years or less. However, if personal property is being transferred or loaned under an unfunded agreement, OGC review must be obtained. Furthermore, all joint project agreements, regardless of funding, must continue to be cleared by OGC.

We found that these new guidelines are a good start to ensuring that the appropriate NMFS agreements receive legal review, but they need some additional clarification to avoid confusion in obtaining legal review for NMFS agreements. For example, we found that there is some confusion about the role of NOAA Counsel in the review and approval process. In some cases, NOAA Counsel is actually involved in drafting agreements and provides legal advice to program officials before the agreement is sent to OGC for approval. While this is permissible and often results in more sound agreements, it should not take the place of OGC's formal legal review for all agreements that meet the requirements for legal review, as stated in the guidelines. While we did not find that NOAA Counsel's review was being substituted for OGC's during our inspection, we did note that there was confusion regarding NOAA Counsel's role. To rectify this problem, the guidelines should be revised to clearly state that it is the sole responsibility of OGC to provide review and clearance on any NMFS agreements that require legal review, as per the criteria set forth in the guidelines, and that any review done by NOAA Counsel does not constitute meeting the requirement for legal review and clearance.

We also found that there is some confusion regarding the use of the term "unfunded agreements" in the NMFS guidelines. Some NMFS officials are defining an unfunded agreement as any agreement where a transfer of funds does not take place. However, OGC does not subscribe to this definition because most activities that take place pursuant to agreements carry definite value (such as government resources, including staff time) even if no actual funds are transferred between the signatories to the agreement. As a result of the confusion, some agreements that should be reviewed and cleared by OGC are not receiving such treatment. OGC has already recognized this problem and is working with the agency to resolve the confusion over the term. We would suggest that the NMFS guidelines be revised to clear up the confusion regarding the

¹NMFS should be aware that the Department may soon develop Department-wide guidance on agreements. We have issued a draft report *Office of the Secretary Interagency and Other Special Agreements Require Better Management and Oversight*, IPE-10418, June 22, 1998, to the Department's Chief Financial Officer/Assistant Secretary for Administration and General Counsel with the recommendations to develop formal Department-wide policies and a tracking system for agreements. Accordingly, NMFS may soon need to revise its internal procedures to be consistent with this forthcoming departmental guidance.

term “unfunded agreements” and to reflect precisely which agreements require OGC review and clearance.

In addition, OGC and NMFS personnel have told us that it is too soon to determine any resulting benefits from the new legal review thresholds contained in the guidelines. We estimated that 25 percent of the agreements on NMFS’s list of agreements for fiscal year 1997 would no longer require review by OGC under the new thresholds, thereby potentially reducing OGC’s workload. NMFS and OGC should evaluate the full impact of the OGC review process and thresholds no more than a year from implementation, and revise these thresholds as necessary.

NMFS does not always recover full costs

The May 1995 audit report cited NMFS’s lack of a time management system for recording labor costs and inadequately supported overhead rates as the primary causes for NMFS’s inability to achieve full cost recovery. Our limited review indicates that this situation still exists. For example, an agreement between NMFS and the Department of the Interior’s National Biological Service allowed NMFS to conduct research in support of the National Marine Mammal Tissue Bank and the Alaska Marine Mammal Tissue Archival Project for \$70,000 in fiscal year 1997. NMFS is required by federal law, Office of Management and Budget Circular A-25 dealing with user fees, *Department of Commerce Accounting Principles and Standards Handbook*, and the *NOAA Budget Handbook* to achieve full cost recovery for work performed under some agreements. In particular, the Economy Act (31 U.S.C. §§ 1535-1536), requires federal agencies to recover actual costs for reimbursable work performed for other federal agencies. While the Economy Act is appropriately cited in this agreement, NMFS did not charge labor and overhead to the National Biological Service. In addition, NMFS did not obtain a waiver from the requirement to recover full costs, as required by the *NOAA Budget Handbook*.²

Some NMFS agreements do not cite legal and/or funding authority

More than a dozen NMFS agreements we reviewed failed to cite any legal and/or funding authorities. The new NMFS guidance requires that all agreements cite applicable administrative/programmatic legal authority(ies). In addition, the *NOAA Budget Handbook* and *NOAA Administrative Order 201-105* provide model agreements that require citation to applicable legal authorities. Legal authorities typically cited in agreements include: Economy Act of 1932 (31 U.S.C. §§ 1535-1536), Joint Project Authority (15 U.S.C. §§ 1525-1526), Intergovernmental Cooperation Act (31 U.S.C. § 6505), Federal Technology Transfer Act of 1986 (15 U.S.C. §§ 3710a-3710d), and general user fee authority under OMB Circular A-25 and 31 U.S.C. § 9701. Program authority may also exist as a result of congressional action. For example, specific authority for another federal agency to transfer funds to NOAA may be contained in program statutes, such as the Clean Water Act.

² Chapter 2, Section 3, June 30, 1994.

In two instances, NMFS prepared internal transmittal memoranda that cited the legal authority for the two agreements, but did not include the citations in the agreements themselves. In another two instances, NMFS prepared an addendum that cited the legal authority. However, we do not believe that this practice is sufficient to comply with departmental and agency policies. Both the memoranda and addenda can be easily separated from the agreement, making it difficult to determine whether a legal citation was associated with a given agreement. Also, the transmittal memoranda and addenda with additional terms may not constitute valid agreements between the parties, because they were unsigned.

The current practice of not directly citing a legal authority in all agreements is inappropriate. We found that the new NMFS guidance requires that the correct legal authorities be cited in all NMFS agreements. Therefore, provided the guidance is followed, this problem should be corrected.

Several NMFS agreements are invalid because they lack authorized signatures

During our inspection we found that 2 of the 49 agreements we reviewed were not signed by either party and another 2 agreements were not signed by NMFS. In addition, we questioned the validity of another agreement between NMFS and Texas A&M University because the authorizing signatures were on separate documents. Texas A&M officials signed the draft agreement, but NMFS signed a separate one-page cover sheet. The *NOAA Budget Handbook* specifies the approval authority for reimbursable agreements. Without proper signatures or acknowledgments by both parties, an agreement is not valid. If an agreement is not valid, neither party may be required to fulfill all terms and conditions, putting NMFS's resources at risk. For example, NMFS may provide services to fulfill a reimbursable agreement; however, the other party may refuse to pay if the agreement was never signed by both parties.

Some NMFS agreements are not regularly reevaluated

Some NMFS agreements are not being periodically reevaluated for their continued need and appropriateness. One agreement between NMFS and the Pacific States Marine Fisheries Commission had specific details that are no longer relevant or accurate. For example, the number of council personnel working on-site at NMFS facilities had changed. In addition, another six agreements were no longer active, but there is no documentation that these agreements were ever closed out. An agreement with the 172nd Infantry Brigade of Alaska was signed in 1981, but NMFS has not utilized the services of the brigade for at least seven years.

NMFS's new guidelines do not specifically address the time period required for the review of existing agreements. Without a periodic reassessment, there is no assurance that agreements continue to, among other things, (1) comply with legislative and regulatory authority, (2) meet legislative criteria, (3) be mission-related and needed, or (4) protect the government's interests. NMFS needs to ensure that agreements are reviewed, at least every three years, to determine whether they should be revised, renewed, or canceled. It should amend its guidelines accordingly.

Duration of NMFS agreements is not always defined

Twelve of the NMFS agreements we reviewed did not sufficiently define a termination date, and three failed to cite an effective date. One agreement that lacked a termination date was signed in 1994 with the Department of the Navy for NMFS to provide technical services to monitor transplanted eelgrass. Another agreement, with the U.S. Army Corps of Engineers for NMFS to address utilization patterns of sea grass beds for \$98,000, also does not specify a termination date. Absence of effective dates and/or termination dates may lead to confusion over billing and when performance of work is to begin and end. An ill-defined performance period may ultimately result in performance of work that is no longer mission-related, waste of funds and personnel, or inequitable apportioning of project costs.

NMFS's new guidelines require a duration for all agreements. However, the guidelines do not address agreements that continue over an extended term, when it is not feasible to define a termination date. Therefore, the new NMFS guidelines should also be amended to include a requirement that agreements with extended terms contain a provision for a periodic review and amendment by mutual consent of the parties. As stated above, we believe this periodic review should occur at least once every three years.

II. Database or Tracking System to Document and Compile Agreements Is Needed

NMFS does not have a comprehensive database or tracking system for its agreements. NMFS's correspondence control unit maintains a database of agreements, as part of a larger database of correspondence signed by the Assistant Administrator and/or sent to OGC for approval. Each document in the database is assigned a unique control number. However, this database lacks vital information about the agreements, such as agreement type, dollar amount, and other parties to the agreement. In addition, since the new guidelines for review by OGC have been implemented, some agreements no longer require review and approval by OGC. However, there is no procedure in place to record information in the database about the agreements that will not be reviewed by OGC. In addition, NMFS management keeps a word processing system that lists all agreements, but this method of tracking agreements is not easily sorted by relevant information such as type of agreement, level of funding, and/or other parties to the agreement.

A central database of NMFS agreements would be a useful management and administrative tool and would help NMFS programs maintain their agreements. By having agreement dates tracked in the system, program officials could easily identify agreements that are due for renewal, termination, or review. In addition, program officials could quickly respond to inquiries on particular agreements by accessing the system to acquire current agreement information.

A central database of agreements would also help NMFS comply with the Government Performance and Results Act of 1993. The Act requires that federal agencies describe coordination and planning with other agencies on shared or similar functions and programs. In July 1997, the House Science Committee criticized Commerce's strategic plan for failing to

adequately discuss coordination of cross-cutting programs. The Department has since included more information about external program “linkages” in its strategic plan for 1997-2002. For each strategic theme (economic infrastructure, science/technology/information, and resource and asset management and stewardship), the Department describes several linkages with other federal and non-federal parties that support these themes. With a database of its agreements, NMFS could provide input into NOAA’s and Commerce’s strategic plans, with such information as how many agreements exist, what agencies and other parties are involved, and total funding provided through these agreements. This information could prove useful in further developing the strategic plan linkages.

NMFS’s agreement database should include certain key elements, such as project title, parties, termination date, review date, legal authority, funding information, and contact person or office. The database should also identify the type of agreement (*i.e.*, memorandum of understanding or agreement, reimbursable agreement, or obligation agreement). This system could also be used to establish a document numbering system. Each entry would be assigned a unique number, which would then be placed on the actual agreement and any related documents. NMFS could then better identify and track the physical documents. Given the large number of NMFS agreements and their importance to achieving NMFS’s mission, a comprehensive database of agreements with relevant information would help management and program officials fully understand their interagency commitments and better control and maintain their agreements.

Therefore, NMFS should determine the feasibility of enhancing the existing system maintained by the correspondence control unit. If this is not feasible, NMFS should establish a separate database to track and administer agreements. As previously mentioned, in a separate report to the Department’s Chief Financial Officer/Assistant Secretary for Administration and General Counsel, we make cross-cutting recommendations to improve the Department’s handling of interagency agreements, including the establishment of a Department-wide database of agreements. NMFS should closely coordinate with the Department to ensure that its agreements database is consistent and compatible with any forthcoming departmental policy and procedures.

RECOMMENDATIONS

We recommend that the Under Secretary for Oceans and Atmosphere direct appropriate officials to take the following actions:

1. Regularly monitor the effectiveness and efficiency of NMFS's guidance on agreements, including a comprehensive review one year from full implementation of the new guidance, to ensure that adequate management controls are in place.
2. In coordination with OGC, revise NMFS's guidance on agreements to clarify that it is the sole responsibility of OGC to provide review and clearance on any NMFS agreements that require legal review, as per the criteria set forth in the guidance, and that any review done by NOAA Counsel does not constitute meeting the requirement for legal review and clearance. In addition, the guidance should be revised to clear up the confusion regarding the term "unfunded agreements" and to reflect precisely which agreements require OGC review and clearance.
3. In coordination with OGC, evaluate the full impact of the OGC review process and thresholds no more than a year from implementation, and revise these thresholds as necessary.
4. Amend NMFS's current guidelines to ensure that agreements are reviewed, at least once every three years, to determine whether they should be revised, renewed, or canceled. Also, amend the guidelines, to include a requirement that agreements with extended terms contain a provision for a periodic review, at least every three years, and amendment by mutual consent of the parties.
5. Develop a centralized database of all NMFS agreements, including such information as project title, parties, termination date, review date, legal authority, funding information, contact person or office, and type of agreement. This system can also be used to establish a document numbering system. Coordinate with the Department to ensure that NMFS's agreements database is consistent and compatible with any forthcoming departmental policy and procedures.



In response to our draft report, NMFS agreed with our recommendations presented in the report. NMFS's response states that some of our recommendations will be resolved as a matter of course by continuing implementation of the newly developed policy and procedures on interagency agreements, while others will be the focus of an action plan to be developed in response to our final report. We have requested a copy of this action plan to address our recommendations.

OGC also prepared a response to our draft report, which agreed with the majority of our findings and recommendations. However, OGC disagreed with our second recommendation that policies and procedures should be drafted for obtaining NOAA Counsel review and approval of NMFS agreements and that current legal review guidance should be amended to include this additional criteria. OGC stated that the way the recommendation was worded implied that each and every agreement must have legal clearance, which OGC believes is unnecessary and, in many instances, would create an administrative burden without providing any legal benefit. In addition, OGC contended that the report wrongly implied that NOAA Counsel is responsible for review and approval of agreements. We agree with OGC's position and have revised both the text of the report and the recommendation to clarify the issue of legal review of NMFS agreements.

Attachments

cc: W. Scott Gould, Chief Financial Officer and Assistant Secretary for Administration
Rolland A. Schmitten, Assistant Administrator for Fisheries
Barbara S. Fredericks, Assistant General Counsel for Administration
Sonya G. Stewart, Director, Office of Executive Budgeting and Assistance Management

NMFS Response to the Draft Report



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
CHIEF FINANCIAL OFFICER/CHIEF ADMINISTRATIVE OFFICER

SEP 25 1998

MEMORANDUM FOR: Johnnie Frazier
Acting Inspector General

FROM: Paul F. Roberts *Paul F. Roberts*

SUBJECT: NOAA Response to Draft OIG Report "NMFS
Interagency and Other Special Agreements
Require Additional Improvements," Report
No. IPE-10775

Attached are the National Oceanic and Atmospheric Administration's (NOAA) comments on the Office of Inspector General (OIG) draft report entitled "NMFS Interagency and Other Special Agreements Require Additional Improvements," Report No. IPE-10775. We appreciate the opportunity to review and comment on this draft report.

The NMFS agrees with the recommendations presented in the report. Some of these recommendations will be resolved as a matter of course by continuing implementation of the newly developed policy and procedures on interagency agreements, while others will be the focus of an audit action plan to be developed in response to the final OIG report.

Attachment



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NOAA Response to Draft OIG Report "NMFS INTERAGENCY AND OTHER
SPECIAL AGREEMENTS REQUIRE ADDITIONAL IMPROVEMENTS,"
REPORT NO. IPE-10775

General Comment: (draft report page 6, last paragraph, second sentence) Pacific Marine States Fisheries Council should be Pacific States Marine Fisheries Commission.

OGC Response to the Draft Report



UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, D.C. 20230

SEP 30 1998

MEMORANDUM FOR: Jill A. Gross
Acting Assistant Inspector General for
Inspections and Program Evaluations
Office of the Inspector General

FROM: Brian D. DiGiacomo *Brian D. DiGiacomo*
Chief, General Law Division

SUBJECT: Draft Inspection Report No. IPE-10775

As you requested at our meeting this morning, below we are providing our comments to Draft Inspection Report No. IPE-10755 on interagency and other special agreements of the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA).¹ The NMFS report recommends certain changes regarding NMFS's newly implemented policies and procedures and recommends monitoring the effectiveness and efficiency of the new guidance. While we agree with most of your recommendations, there are some comments in the NMFS report with which we do not agree.

Again, we are pleased to note the reports reveal no problems with the accuracy or completeness of our legal review. We also note the review did not reveal any case where the problems identified in the report resulted in harm to NOAA or to the Department. This fact is significant as the Department attempts to balance the need for new requirements with the continued need for flexibility in carrying out the wide variety of activities and functions among all Department bureaus and offices. We hope our comments will assist you in making your final reports both accurate and effective, and we are glad to assist in improving policies and procedures concerning the review and management of agreements. We appreciate your office's efforts in attempting to attain that goal.

Again, we would like to stress that the ultimate responsibility for compliance with all requirements will rest with the official who signs an agreement. Therefore, we believe the primary goal of any plan for improvement should be to ensure that managers fully understand both the requirements in the law and their responsibility. We will continue to work with your staff in this effort.

¹ Draft Report: *NMFS's Interagency and Other Special Agreements Require Additional Improvements* (IPE-10775).

As with Draft Inspection Report No. IPE-10418,² the NMFS report coincides with our own recent efforts with NOAA and other operating units to improve the preparation and review of agreements.

For example, since the issuance of the new NMFS policies and procedures, we have identified problem areas in their policies and procedures and have been working with NOAA to provide better written guidance on agreements. We would like for the IG reports to reflect our involvement in this process and NOAA's efforts, which have all been undertaken independent of the IG review process.

A specific example, which has not been addressed in any IG report, is that NOAA Administrative Order 201-105 contains contradictions, and, therefore, most likely is misleading to NOAA officials who are trying to follow it. Accordingly, in August, 1998 we met with NOAA officials to discuss our concerns. We are working with NOAA to provide a solution to this problem through the development of better policies and procedures, including revisions to the NMFS policies and procedures.

The following is our response to the specific recommendations you have made in the NMFS draft report--these responses are intended to supplement our comments which we set forth in our response to Draft Inspection Report No. IPE-10418:

1. "Regularly monitor the effectiveness and efficiency of NMFS's guidance on agreements, including a comprehensive review one year from the full implementation of the new guidance, to ensure that adequate management controls are in place."

We agree with this recommendation and, as stated above, already have been working with NOAA to provide more effective guidance than that currently contained in the new policies and procedures. We also support the idea of a comprehensive review one year from the full implementation of the guidance.

2. "In consultation with OGC and NOAA Counsel, draft policies and procedures for obtaining NOAA Counsel review and approval of NMFS agreements and amend current legal review guidance to include this criteria."

We disagree with this recommendation, and suggest you alter it by deleting any reference to procedures that would require NOAA's Office of General Counsel (NOAA/GC) review and approval. First, the report wrongly implies that NOAA/GC is responsible for review and approval of agreements such as Joint Project agreements, Economy Act agreements, and other agreements. It is the responsibility of the General Counsel to

² Draft Report: *Office of the Secretary, Interagency and Other Special Agreements Require Better Management and Oversight* (IPE-10418).

review all agreements,³ and that responsibility was delegated to the Office of the Assistant General Counsel for Administration (OAGC/Admin).⁴

Secondly, this implication will confuse our clients. To have some agreements cleared by one office of the General Counsel and other similar agreements cleared by another legal office would result in confusion for the clients that are trying to draft and implement agreements. This is so because different approaches and interpretations of the law may be given to the client. This is one of the reasons why, for example, all authority for ultimate clearance of joint projects and economy act transactions resides solely in OAGC/Admin; of course, contracts and financial assistance agreements are reviewed by the Office of the Assistant General Counsel for Finance and Litigation (OAGC/F&L).

Thirdly, your current recommendation implies that each and every agreement must have legal clearance. This is not necessary, and in many instances would create an administrative burden without providing any legal benefit. We believe that your recommendation should, instead, focus on developing procedures that guide NMFS as to when a proposed agreement will require more legal review by OAGC/Admin. Predictably, NMFS program offices are beginning to follow the NMFS guidelines and the formats. In those cases (for example, Economy Act transactions under \$100,000), the program offices have already received adequate legal advice in that they need only to follow the format and guidelines provided. There is no need for further legal review and clearance unless the program official determines a need for such further review. Requiring a procedure that mandates additional legal review for every agreement is not an efficient use of the Department's resources, nor is it mandated by law.

We do, however, agree that the NMFS guidelines should be revised to reflect more clearly (1) which agreements need legal review and (2) the fact that it is the responsibility of OAGC/Admin to provide clearance of such agreements. Furthermore, the guidelines should be revised to "clear up" the concept of "unfunded agreements" which we reference in our response to Draft Inspection Report No. IPE-10418.

3. "In coordination with OGC, evaluate the full impact of the OGC review process and thresholds no more than a year from implementation, and revise these thresholds as necessary."

We agree with this recommendation and would request that the recommendation reflect that we are already evaluating the effectiveness of the policies and procedures with NMFS.

³Department Organizational Order 10-6, § 4.01.b.

⁴*Memorandum from General Counsel Ginger Lew, Subject: Memoranda of Understanding (April 8, 1994).*

4. "Amend NMFS's current guidelines to ensure that agreements are reviewed, at least once every three years, to determine whether they should be revised, renewed, or canceled. Also, amend the guidelines, to include a requirement that agreements with extended terms contain a provision for a periodic review, at least every three years, and amendment by mutual consent of the parties."

We agree with this recommendation.

5. "Develop a centralized database of all NMFS agreements including such information as project title, parties, termination date, review date, legal authority, funding information, contact person or office, and type of agreement. This system can also be used to establish a document numbering system. Coordinate with the Department to ensure that NMFS's agreements database is consistent and compatible with any forthcoming departmental policy and procedures."

We agree with this recommendation.